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THE PROTECTION OF AMERICAN CITIZENS

BY DAVID JAYNE HILL

FOR more than a year the American people, and particularly the Congress, have been urged to make more serious preparation for National Defense. Voluntary organizations, composed of patriotic citizens, solicitous of the welfare of the country, have advocated measures for its greater security. The public interest has, however, been by no means universal; partly because we have a traditional belief in our immunity from foreign aggression, partly because there is among us a wholesome dread of militarism, and partly because we have been officially assured that the question of National Defense is merely academic, the army and navy of the United States being sufficiently strong and well equipped to furnish us adequate protection in any circumstances likely to arise.

Within a few months the situation has produced great disquietude. The continued disturbance along our borders, resulting in the death of considerable numbers of American citizens in Mexico and assaults on our troops upon the Mexican frontier, has not abated. New complications upon the high seas have arisen involving the safety of American travelers. Grave questions of national honor and duty have deeply impressed the people, and all thoughtful men throughout the country have had their attention turned to conditions which the more far-seeing had long apprehended as likely to exist.

In an unprecedented fashion, the President, himself finally convinced that our national defenses are inadequate, in order to overcome the apathy of a Congress, more interested in measures of its own than in providing for the defense of the nation, or still believing that it has no duty to

perform, has in person gone to the people with eloquent appeals to press the Congress to give him the support he had previously considered unnecessary.

It is still uncertain whether that support will be accorded. The emergency that was particularly in the President's mind when he made those appeals, may, in the meantime, have disappeared. In this case, the demand for an increase in our military and naval strength may be less insistent; or—for such changes in American policy are not unknown—it may cease altogether.

It is timely, therefore, to consider what should be the permanent and unalterable policy of the United States, and the means available to carry it into execution.

It would be a reprehensible course if, after stirring the soul of the nation regarding its possible perils, it should be left to some other, and perhaps less favorable occasion, to emphasize our duties. It is a sufficiently humiliating commentary on the negligence of American democracy, that it should have been found necessary for the President of the United States to leave the seat of government at a moment of critical diplomatic negotiation, and appeal to the country for the popular support in giving him a mandate and the means of action in sustaining the honor of the nation and performing the duties of his office as its constitutional guardian. If it is still a matter of doubt whether, in like circumstances, the President should feel able, without a specific appeal, to perform those duties and to rely upon unanimous support, there is occasion for grave anxiety regarding the future prestige of the United States among the nations of the world.

There is, then, good reason for continuing, apart from special conditions, the discussion of National Defense. Do we need it? Can we afford not to have it? Shall we be able to secure it in adequate measure?

It is not the purpose of this article to attempt to answer all of these questions. It is designed solely to concentrate attention upon the proper answer to the first; for every intelligent man quite naturally feels that he must first settle in his own mind that something is in danger,—in short, that there is something for which we as a people are responsible, and which it is our duty to defend.

Nothing is easier than to dismiss as groundless fears some of the suppositions that have been put forward as

reasons why we should at once organize a great army to be kept on a war footing.

I cannot believe, for example, that we are exposed at this time to the danger of any immediate attack upon our territory. There is no invincible armada turning its prows toward our coasts, or at this time preparing to do so. I do not believe that there is any nation that has it in mind to organize a band of conquistadors to restore piracy on the high seas, or to sally forth in quest of new colonies, to be taken by force from a civilized people; and I consider it detrimental to the cause of national defense to advance such arguments.

What we have to fear is, that sometime, somewhere, there will arise a dispute over the rights of our citizens, or the rights of the citizens of other countries within our jurisdiction or sphere of influence, which we shall not be able to settle amicably, unless we are strong enough to be really formidable, and to make our words and our standards of conduct universally respected.

Such an occasion may occur regarding the safety of American life and property in ill-governed countries; or on the high seas; or respecting the rights of innocent commerce; or the right of other nations to establish naval bases and erect defenses in territories in proximity to our own; or movements upon those waters where we desire that in future there shall be no warlike operations.

The fundamental question is, therefore, how far are we prepared to go in protecting the lives and property of American citizens or in prohibiting such operations on land and sea as are likely to endanger them in the future?

If we desire to avoid the hostility of other nations, we must make it evident that what we aim at is defense and not aggression; that we have no imperial designs; that we have no spirit of conquest, spoliation, or vindictiveness; and that we stand unitedly upon the solid platform of recognized international law as the protector of human rights.

We do, undoubtedly, differ from some other peoples in our belief that there are human rights, inherent and inalienable, for which every American citizen may justly claim the protection of his Government. That is the corner-stone of our democracy. Our whole edifice rests upon it, and we cannot permit it to be questioned. We cannot concede that there is only *one* duty—the duty of the individual to the State.

We must uphold the doctrine that the State has a duty to the individual, and to every individual,—be it man, woman, or child,—within our borders, and beyond our borders, especially upon the sea, which is our common highway. We demand no special privileges there, we pretend to no dominant authority there, but we claim the right to safety and to justice there, and everywhere where we are expected to call men friends.

And here is where our doctrines are most likely to bring us into conflict with others. We cannot allow the law of war utterly to destroy the rights of peace. We cannot allow new conditions of warfare, which may increase the burdens and dangers that must be endured by belligerents, to annihilate the time-honored privileges and safety of neutrals. We shall find it very difficult to call by the name of "friend" any nation which, in its desire to conquer, shall insist upon taking means to do so that involve the certain destruction of innocent American lives or the needless interruption of innocent American commerce.

We shall, of course, distinguish between the assault upon life and the sequestration and even the destruction of property; for the reason that property losses may be made good by the payment of indemnities, while the loss of human life can never be indemnified. In neither case, however, can the absence of direct hostility or intention to injure serve to excuse an injurious act. International friendship, as well as private friendship, implies not only the absence of an intention to injure, but a disposition to avoid injury by employing every means of protection.

It would, however, be ungenerous not to remember that unusual, and even abnormal, feelings, such as may lead to momentary moral irresponsibility, are often excited in time of bitter warfare. These feelings may explain, but they can never justify, a disregard for the rights of others; and it is the custom of all civilized nations to offer protection, even to their enemies, against such expressions of feeling in moments of violent excitement. That is the whole significance of the laws of war, carefully elaborated in the interest of humanity, in the full consciousness of the insufficiency of self-restraint when men are struggling for their very existence.

We cannot, therefore, whatever the emergency may be, freely consent, or consent under constraint, that the right,

knowingly, not to say purposely, to take innocent life where it can be avoided, be written, even by implication, into the law of nations. International law is, it is true, still in the process of formation; and every great precedent is considered as changing it, when it becomes a matter of common consent, even though the consent be tacit. International law should not rest upon personal feelings, or good or evil intentions, or the exigencies of a trying situation. It should rest upon just and defensible principles, which are fit to govern the conduct of civilized nations toward one another.

It is in view of this fact that the right of protest or remonstrance always exists. Without it there could be no true society of nations. International law is made by the weight of international opinion, and it is the right of every sovereign state to countenance or to discountenance any procedure and especially any innovation affecting the law of the future.

I have said that we shall find it difficult to speak of "friendship" where, for any reason, a Government insists that a new form of power confers a right to destroy, knowingly, innocent and undefended non-combatants upon the high seas. New forms of international law may be necessary with regard to the transportation of passengers and contraband of war upon the same vessel, and there may be room for the discussion by an international conference, in the interest of an equitable adjustment of belligerent and neutral rights at sea, upon this point; but it would be a delinquency to permit that there shall be a recession to that condition of lawlessness which all civilized nations have endeavored to prevent.

On the contrary, if changes are to be made, they should be in the direction of rendering war more difficult and peace more secure. It is precisely because international law is in the process of formation, and because we should have a voice in determining the direction in which it should be developed, that pending decisions are of interest to us. It is interesting to recall that the highest standards of international ethics that had ever been written into treaties are to be found in the Treaty of 1785 between the United States and Prussia.

In that celebrated convention (long cited as a model of its kind, but which expired, with the exception of Article XII, by its own limitation, in 1796), occurs the following:

Article IX

When any vessel of either party shall be wrecked, foundered, or otherwise damaged on the coasts, or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves as for their vessels and effects, the same assistance as would be due to the inhabitants of the country where the damage happens. . . . The ancient and barbarous right to wrecks of the sea shall be entirely abolished, with respect to the subjects or citizens of the two contracting parties.

Could anything be more friendly and fraternal than this engagement? Could anything be more promising for the future? And again, in

Article XII

If one of the contracting parties should be engaged in war with any other Power, the free intercourse and commerce of the subjects or citizens of the party remaining neuter with the belligerent Powers shall not be interrupted. On the contrary, in that case, as in full peace, the vessels of the neutral party may navigate freely to and from the ports and the coasts of the belligerent parties, free vessels making free goods, insomuch that all things shall be judged free which be on board any vessel belonging to the neutral party, although such things *belong to an enemy of the other*; and the same freedom shall be extended to *persons* who shall be on board a free vessel, *although they should be enemies to the other party*, unless they be soldiers in actual service of such enemy.

Could there be any higher respect for neutral rights than this? And yet this article, revived by the Treaty of 1828, is regarded as in force to-day.

Article XIII

And, in the same case, if one of the contracting parties being engaged in war with any other Power, to prevent all the difficulties and misunderstandings, that usually arise respecting the merchandise heretofore called contraband, such as arms, ammunition, and military stores of every kind, no such articles carried in the vessels, or by the subjects or citizens of either party, *to the enemies of the other*, shall be deemed contraband, so as to induce confiscation or condemnation and a *loss of property to individuals*. . . . But in the case supposed of a vessel stopped for articles of contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

And this article is also regarded as in force today. I have cited these articles, not for the purpose of establishing any present rights of the United States, but merely to illustrate the spirit of justice and humanity that inspired these treaties; the first of which was signed by Benjamin Franklin, Thomas Jefferson, and John Adams, and registers the high-water mark of neutral rights upon the sea.

They show what those two Governments then considered right, and fit to be made into the Law of Nations. That law may not have developed as it was then hoped it would, but the principles of international morality have not changed, and above all the just requirements of friendship.

Can we, or can the other contracting party to this ancient and solemn engagement, wish to recede from the moral standard set up in that treaty; which recognized the immunity of innocent private property and of all non-combatant persons, even though enemies, upon the sea?

I do not overlook the fact that these treaties relate only to life and property on neutral vessels. Nor do I here attempt to establish the existence of a common law of nations which protects innocent life on all non-combatant vessels, even though belonging to an enemy; for this cannot be called in question. What I maintain is, that reason and conscience support the standard set up in the treaties I have cited: that innocent life and property ought always to be respected on the world's highway, the great seas and oceans which, for scores of reasons, innocent and hitherto unsuspecting travelers—men, women, and children—must traverse, during war as well as peace.

And what I am solicitous about is, that we should not, for fear of any consequence,—not only in the interest of American citizens, who carry our business into every part of the world, but in the interest of civilization itself, as dependent upon a just law of nations,—fail to make a firm stand, and do our part, in impressing upon all mankind the intrinsic value of innocent human life, and its right to protection by all Governments.

DAVID JAYNE HILL.